

NTSB Order No. EA-4841

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of May, 2000

Docket SE-15188

in the future. First, she claims that the Board misinterpreted FAA Advisory Circular No. 120-43, entitled "The Influence of Beards On Oxygen Mask Efficiency" (1/27/87). The Administrator asserts that she considers the issue of decreased oxygen mask efficiency for bearded persons in the cockpit to be a safety issue only for crewmembers, not for anyone else in the cockpit. We see no error in the Board's explanation of the Administrator's position. See NTSB Order No. EA-4804, n.5, quote from Advisory Circular 120-43. We were aware that the Administrator recognized that a beard could disrupt the seal around a wearer's oxygen mask and thus impede the flow of oxygen to that person, which could affect awareness, capability, performance, and, ultimately, consciousness. We also understood that the Administrator perceives this as a safety issue only for a crewmember. We sought to make the point, however, that a person sitting in the jumpseat, obviously within close proximity to the crew, would be wearing the same type of mask and, if bearded, might, like a crewmember, be deprived of sufficient oxygen to maintain alertness and, perhaps, consciousness. As we stated, "[t]he possibility that during an emergency the crew might be distracted from operating the aircraft by a jumpseat rider who was not receiving an adequate supply of oxygen to remain coherent and conscious seems to be a justifiable safety concern."² NTSB Order No. EA-4804 at n.14.

The Administrator also states that the Board erred by calling the Flight Operations Manual (FOM) "approved" rather than accepted by the FAA. Further, she asserts that since the version of the FOM which read "For safety reasons, beards are not acceptable in the cockpit" had not been accepted by the FAA, Delta Airlines "assumed the risk that its implementation and use may not be legal." Administrator's Petition at 4-5. While this may be true, it does not show how respondent is responsible for Delta's assumption of risk.³ The Administrator continues,

In fact, the FOM should not have been given the same weight as a regulation even if the FOM had been accepted by the FAA. The fact that it was not accepted meant that Respondent risked a regulatory violation by

²Further, the Administrator's concerns to the contrary, it does not seem likely that the Advisory Circular will begin to be interpreted to apply to passengers. First of all, the Advisory Circular specifically discusses the type of oxygen mask worn in the cockpit, which is different from the passenger masks. Secondly, unlike a jumpseat rider, the passengers do not sit mere feet away from the crew. Thus, if a passenger were to become incoherent or unconscious from lack of oxygen, it would not be a direct distraction for the crewmembers.

³Whether the FOM is accepted or approved, it is nevertheless reviewed by an FAA representative.

relying upon it. Accordingly, Respondent's reliance on the provision in the FOM was unreasonable, even though he confirmed it with his Chief Pilot.

Id. at 5. While the FOM dated August 31, 1995, which included the phrase "for safety reasons," was not accepted by the FAA Principal Operations Inspector, an FOM without that phrase was accepted and in force on June 16, 1996. It stated simply "beards are not acceptable in the cockpit." See NTSB Order No. EA-4804 at 4-5 and n.7. Whether or not the removal of the phrase was sufficient to make it plain that the beard prohibition must not be applied to FAA inspectors is not clear.

Finally, the Administrator insists that the Board erred by failing to defer to her position in this case. We disagree. We recognized that an FAA inspector may only be denied access to the cockpit in the interest of safety,⁴ but found that respondent was reasonable in his belief that he refused the inspector access to the cockpit for safety reasons. As such, our opinion and order is entirely consistent with the Administrator's validly adopted interpretation of laws and regulations.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition for modification is granted only for the purpose of changing any reference from "FAA-approved FOM" to "FAA-accepted FOM" and denied in all other respects.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

⁴Id. at n.6. We note that the citation should read 14 C.F.R. § 121.547(a).